No. 87-645

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

F. CLARK HUFFMAN, *et al.*,
Petitioners

v.

WESTERN NUCLEAR, INC., *et al.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF OF THE GOVERNMENT OF AUSTRALIA AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether, as Congress intended, 42 U.S.C. § 2201(v) should be interpreted so as to be consistent with the U.S. Government's obligations under the General Agreement on Tariffs and Trade.

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BRIEF OF THE GOVERNMENT OF AUSTRALIA AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

Having obtained the written consent of the parties pursuant to Rule 36.1 of the Rules of this Court, the Government of Australia submits this brief as amicus curiae in support of the petition for a writ of certiorari.

INTEREST OF THE GOVERNMENT OF AUSTRALIA

The United States is the world's largest commercial market for uranium. Australia has the largest uranium reserves of any non-Communist country and has been a reliable and stable supplier of uranium to the United States. U.S. electric utilities have entered into long-

term contracts through 2005 to purchase more than 15,000 short tons of uranium from Australia worth hundreds of millions of dollars.[1] The Australian uranium industry has made very substantial investment and trading decisions in reasonable reliance on the expectation of continued access to the U.S. market.

As one of the United States' closest allies, the Commonwealth of Australia is a party with the United States in numerous international trade and nuclear non-proliferation agreements. Since 1970 the Australian and United States Governments have cooperated closely in international fora in promoting the objective of non-proliferation under the Nuclear Non-Proliferation Treaty.[2] As part of this cooperative commitment Australia has consciously circumscribed the commercial outlets available to its domestic uranium industry in order to add further impetus to the non-proliferation objective and to seek to strengthen the applicability of nuclear safeguards.

The decision of the court below requires the U.S. Department of Energy to terminate the provision of all enrichment services to foreign uranium intended for use in the United States. Even though this would not directly prohibit the importation of unenriched uranium, its practical effect would be to restrict such importation. If not overturned, that judicial reversal of current Executive Branch international trade policy will, in the view of the Australian Government, place the U.S. Government in violation of its obligations to the Australian Government under the General Agreement on Tariffs and Trade ("GATT").[3] It will also do serious injury to the Australian uranium industry, which relies solely upon exporting. The flow of Australian uranium to the United States will be severely restricted, and U.S. utilities may be caused to breach their very substantial long-term supply contracts with Australian uranium producers.

[1] It has been estimated that, for the period between 1985 and 1990, U.S. utilities have contracted for about $780 million worth of foreign uranium. Emergency Motion of the Appellants for Stay Pending Certiorari to the United States Supreme Court at 7 (filed in *Western Nuclear, Inc. v. Huffman*, 825 F.2d 1430 (10th Cir. 1987) (No. 86-1942)).

[2] Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483; T.I.A.S. No. 6839; 729 U.N.T.S. 161.

REASONS FOR GRANTING THE PETITION

On several occasions the Australian Government has officially notified the U.S. Government of its concern over the lower courts' decisions in this case and its view that compliance with their orders would breach Australia's entitlements and the U.S. Government's commitments under the GATT.[4]

The Solicitor General has recognized the seriousness of these concerns in his petition to this Court by stating that, if left unreviewed, the lower court's decision "will have very serious adverse consequences for . . . United States trade, nuclear cooperation and nonproliferation policies." Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit at 23-24.

The Australian Government supports the persuasive domestic law arguments advanced by the Solicitor General to explain his contention that the court of appeals' decision is "seriously flawed." *Id.* at 15. However, the Australian Government submits that there is an additional important reason to grant the petition for review. The lower court's interpretation of 42 U.S.C. § 2201(v) is erroneous because Congress expressly intended that

[3] October 30, 1947, 61 Stat. pts. 5, 6; T.I.A.S. No. 1700; 55 U.N.T.S. 61.

[4] *See* Diplomatic Note No. 186/86A, (June 27, 1986) reprinted as Appendix No. 1 to this Brief: Diplomatic Note No. 237/87 (July 24, 1987) reprinted as Appendix No. 2 to this Brief.

provision to be consistent with the U.S. Government's GATT obligations. As will be developed below, the lower court's interpretation of the provision would render this statute wholly inconsistent with the U.S. Government's obligations under the GATT, which is recognized as a part of U.S. law.

ARGUMENT

CONGRESS INTENDED SECTION 2201(v) TO BE CONSISTENT WITH THE GATT, WHICH IS A PART OF U.S. LAW, AND THE LOWER COURT'S INTERPRETATION OF THAT STATUTE CANNOT BE RECONCILED WITH THE GATT

A. The GATT Is Part of U.S. Law

The GATT is a multilateral international agreement to which Australia and the United States are parties. This Court has stated that the GATT "is followed by every major trading nation in the world . . . ." *Zenith Radio Corp. v. United States*, 437 U.S. 443, 457 (1978). In the United States the GATT has been applied provisionally since 1948 pursuant to the Protocol of Provisional Application of the GATT. *See* 61 Stat. pts. 5, 6; T.I.A.S. No. 1700; 55 U.N.T.S. 61. The portions of the GATT relevant to this case have been proclaimed by the President, Proclamation No. 2761A, T.D. 51802, 82 Treas. Dec. 305 (1947), and, consequently, are part of the domestic law of the United States. *United States v. Accurate Millinery Co.*, 42 C.C.P.A. 229, 230 (1955). *See* Jackson, *The General Agreement on Tariffs and Trade in United States Domestic Law*, 66 Mich. L. Rev. 249, 293 (1967).

This Court's long standing rules for interpreting Federal statutes in light of international agreements entered into by the U.S. Government have been summarized as follows by the American Law Institute in Section 134 of the RESTATEMENT OF FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED) (Tent. Final Draft 1985):

> Where fairly possible, a United States statute is to be construed so as not to bring it into conflict with international law or with an international agreement of the United States.[5]

In addition, Section 135(1)(a) provides that:

> An Act of Congress supersedes an earlier . . . provision of an international agreement as law of the United States if the purpose of the Act to supersede the earlier rule or provision is clear and if the Act and the earlier rule or provision cannot be fairly reconciled.

The Draft Restatement also notes the importance this Court has attached to the branches of the U.S. Government "speaking with one voice" on international matters and the consequent judicial practice of giving "particular" or "great" weight to the views of the Executive Branch in international matters. *Id.* at § 132, comment C. *See Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 184-85 (1982) (interpretation of U.S. Friendship, Commerce and Navigation Treaty with Japan).

In this case the Executive Branch has interpreted Section 2201(v) in a manner consistent with the U.S. Government's international obligations. The lower courts erroneously rejected that interpretation and the clear legislative history supporting it.

B. Congress Intended Section 2201(v) to be Consistent with the GATT

When Congress passed Section 2201(v) in 1964 it was mindful of the U.S. Government's obligations under the GATT and intended Section 2201(v) to be consistent with those obligations. The Report of the Joint Committee on Atomic Energy explaining Section 2201(v) states:

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[5] *Citing Lauritzen v. Larsen*, 345 U.S. 571, 578 (1953); *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) and other decisions of this Court.

> [T]he committee believes that these reasonable and flexible restrictions on the performance of services by the . . . [U.S. Government] should not in any sense be deemed inconsistent with any obligations the United States may have under the General Agreement on Tariffs and Trade (GATT) and other international trade agreements.

S. REP. NO. 1325, 88th Cong., 2d Sess., *reprinted in* 1964 U.S. CODE CONG. & ADMIN. NEWS 3105, 3121.

This expression of a Congressional intent to legislate consistently with the U.S. Government's GATT obligations could not be more clear.

In order to understand how the lower court's interpretation of Section 2201(v) is inconsistent with the U.S. Government's GATT obligations, a brief review of those obligations is required.

C. Relevant GATT Obligations

1. *"National Treatment"*

In Article III(1) of the GATT the parties recognize the general principle that a contracting party's domestic laws should not be applied against the products of other contracting parties "so as to afford protection to domestic production." Pursuant to this general principle, Article III(4) provides, in relevant part:

> The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

According to the leading U.S. authority on the GATT this "national treatment" provision means that "imported goods will be accorded the same treatment as goods of local origin with respect to matters under government

control, such as taxation and regulation." J. Jackson, WORLD TRADE AND THE LAW OF GATT 273 (1969).

In this case, the lower court's interpretation of Section 2201(v) mandates that foreign origin uranium be treated differently from U.S. origin uranium. That difference in treatment relates to a matter under the U.S. Government's control—refusal to provide enrichment services to foreign origin uranium for U.S. end-use. That difference in treatment obviously is intended to favor U.S. origin uranium and would affect unfavorably the internal sale of foreign origin uranium in the United States. Consequently, the lower court's interpretation denies "national treatment" to foreign origin uranium within the meaning of Article III(4) of the GATT.

2. *Unhindered Entry into the U.S. Market*

Article II(1)(a) of the GATT requires that the U.S. Government accord Australian uranium "treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule" annexed to the GATT. Under the "Kennedy Round" of GATT agreements imports of uranium from Australia are entitled to tariff free entry into the United States.[6]

In order to ensure that the concessions such as the free entry of Australian uranium granted under Article II(1)(a) are not negated by other domestic measures, Article XI(1) of the GATT prohibits the U.S. Government's imposition of restrictions "other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or *other measures* . . . on the

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[6] Uranium from Australia enters the United States in several different forms under different U.S. Tariff Schedule Item Nos., *i.e.*, TSUS 422.50, 422.52 and 601.57. Each of these is at a rate of duty of "free." II GENERAL AGREEMENT ON TARIFFS AND TRADE, LEGAL INSTRUMENTS EMBODYING THE RESULTS OF THE 1964-67 TRADE CONFERENCE, sched. XX, pp. 1467, 1562 (1967).

importation of any product of the territory of any other contracting party . . ." (emphasis added).

This language is very broad and applies to "all kinds of nontariff barriers (except perhaps for those that can be said to have their impact after 'importation')." K. Dam, THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION 151 (1970). Thus, action by the Department of Energy implementing the lower court's order could be deemed to be a restriction on "importation" prohibited by Article XI. If the restriction is deemed to apply after "importation," the "national treatment" guarantees of Article III apply to protect the foreign item. *See* J. Jackson, WORLD TRADE AND THE LAW OF GATT at 315.

D. The Correct Interpretation of Section 2201(v)

The U.S. Secretary of Energy, after thorough and careful study, concluded that the proper interpretation of Section 2201(v) is that, if the domestic uranium industry is not viable, restrictions pursuant to Section 2201(v) are to be imposed only if they "are needed to, and in fact, will assure the maintenance of a viable domestic uranium industry." Uranium Enrichment Services Criteria, 51 Fed. Reg. 27,132, 27,134 (1986) (Supplementary Information). He also concluded that "structural weaknesses, not foreign competition, are the reasons for the depressed state of the domestic uranium industry" and that "restrictions would not assure the viability of the domestic mining and milling industry." *Id.* at 27,135.

The U.S. Trade Representative, the Cabinet official responsible for the U.S. Government's international trade policy, concluded that, in these circumstances, restrictions imposed pursuant to Section 2201(v) would have "an adverse impact on our trade and other relations with important trading partners without resolving the long-term problems of the industry." Letter from U.S. Trade Representative Clayton Yeutter to Secretary of Energy John Herrington (Dec. 26, 1985). In a declaration filed with

the district court in this case, the Director of Energy Trade Policy in the Office of the U.S. Trade Representative stated:

> A ban on enrichment of foreign uranium would harm the commercial interests of other major trading partners such as Australia. Such a ban would be subject to legal challenge under the General Agreement on Tariffs and Trade (GATT). GATT Article III broadly prohibits member nations from adopting rules or regulations which affect the internal sale, distribution or use of goods, and which discriminate against foreign suppliers of such goods. Even if the stated ban were considered defensible under the national security exception of GATT Article XXI [7], the United States might be found to owe compensation to our trading partners for the "nullification or impairment" of their benefits under the GATT. In this case, other sectors of the U.S. economy would be asked to make sacrifices for any short-term relief provided for the uranium industry.

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[7] Article XXI(b)(i) of the GATT provides that nothing in the GATT shall be construed:

> (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
>
> > (i) relating to fissionable materials or the materials from which they are derived.
> >
> > . . . .

In a letter to the Secretary of Energy, the Trade Representative explained why, in the circumstances of this case, it would be inappropriate for the U.S. Government to seek relief from imports of foreign uranium pursuant to Section 232 of the Trade Expansion Act of 1962, 19 U.S.C. § 1862, which provides relief if imports are found to be threatening U.S. national security. He stated that "[u]ranium for military uses is not an issue here, but only uranium for commercial electric generation." Letter from U.S. Trade Representative Clayton Yeutter to Secretary of Energy John Herrington (Dec. 26, 1985). This reasoning would also make Article XXI(b)(i) inapplicable to the situation at issue in this case.

Declaration of Robert A. Reinstein, ¶ 8 (filed in *Western Nuclear, Inc. v. Huffman*, (D. Colo.) (No. 84-2315)).[8]

Thus, having carefully considered the reasons for the domestic industry's non-viability, and in light of the U.S. Government's GATT obligations and Congress' intent, the responsible Executive Branch officials adopted a relatively narrow interpretation of Section 2201(v). This interpretation is consistent with the U.S. obligations under the GATT which limit actions restricting imported products, *i.e.*, restrictions need not be imposed if they will not assure the maintenance of a viable domestic industry.

These Executive Branch officials also were mindful of the adverse impact that banning enrichment of foreign uranium for U.S. end-use would have on American and Australian nuclear non-proliferation policies. The Deputy Assistant Secretary of State for Nuclear Energy and Energy Technology Affairs stated, in relation to this litigation, that prohibition of enrichment of foreign uranium would create "an increased commercial incentive for the spread of nuclear enrichment technology, which has potential nuclear weapons applications." Declaration of James Devine, *cited in* 51 Fed. Reg. 27,132, 27,137 n.15 (1986)

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[8] In a letter to Congressman Morris K. Udall, the Trade Representative had made the same point.

> Import restrictions that are otherwise inconsistent with the GATT may be taken pursuant to the security exception provisions of GATT Article XXI. The United States and other GATT signatories have invoked this exception very infrequently because of its potential for abuse. Moreover, the drafting history of Article XXI makes it clear that the country invoking the security exception is expected to compensate its trading partners adversely affected by the import restriction by providing concessions on other items of trade. Failure to agree on such compensation could lead to retaliation by the trading partners.

Letter from U.S. Trade Representative Clayton Yeutter to Congressman Morris K. Udall (July 15, 1985).

(Dep't of Energy Final Rule, Uranium Enrichment Services Criteria). He added:

> The United States Government has for many years sought to establish a reputation for the United States as a reliable nuclear trading partner as a vital component of United States non-proliferation policy. Unless the "rules of the game" for nuclear cooperation with the United States are consistent and clear, there is the risk that such cooperation will be diminished and that the credibility and influence of the United States on nuclear non-proliferation matters in both bilateral and multilateral contexts will be undermined.

Id.

The Solicitor General has cited this potential damage to the Executive Branch's nuclear non-proliferation policies as one of the reasons supporting this Court's review of the decision below. Petition for Writ of Certiorari to the United States Court of Appeals for Tenth Circuit at 26-27. The Australian Government supports that reasoning.

The lower court has interpreted Section 2201(v) to mean that, if the domestic industry is not viable, restrictions on enrichment of foreign source uranium for U.S. end-use "must be imposed and become increasingly aggressive, to the point of 100% restriction, until the domestic industry is rejuvenated and becomes viable." 825 F.2d at 1439. Such an interpretation obviously denies Australian uranium "national treatment" under Article III of the GATT, particularly when it is considered that the Executive Branch officials in charge of U.S. energy policy have concluded that foreign uranium is not the cause of the domestic industry's nonviability, and the restriction will not rejuvenate the industry. Similarly, a Department of Energy action implementing the lower court's interpretation could be deemed improper under Article XI of the GATT because it would be a "measure" restricting the import of Australian uranium into the

United States.[9] Even though the lower court's interpretation of Section 2201(v) would not prohibit imports of unenriched uranium directly, its practical effect would be to cripple such imports since they are nearly always made for the purpose of obtaining enrichment by the Department of Energy.

In sum, the Australian Government submits that well established rules of statutory interpretation require that Section 2201(v) be interpreted so that it will be consistent with the U.S. Government's international agreements. The officials of the Executive Branch responsible for the implementation of U.S. international trade agreements and energy laws have made such an interpretation. That reading must be preferred over the lower court's interpretation which constitutes a judicial reversal of Executive Branch trade policy and which could, inconsistently with the intent of Congress, place the U.S. Government in breach of its international obligations to one of its closest allies.

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[9] The United States has itself invoked Article XI in the context of the trade in uranium. In December 1986 the U.S. Government sought consultations with the Canadian Government under Article XXIII(1) of the GATT because of the alleged infringement of U.S. rights under Article XI(1) arising from Canadian restrictions on the export of unprocessed uranium. *See* "Canada—Restrictions on Export of Unprocessed Uranium," GATT Doc. L/6104 (Dec. 12, 1986).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 18, 1987

APPENDICES

APPENDIX NO. 1

[Australian Embassy Seal]

Note No. 186/86A

The Embassy of Australia presents its compliments to the Department of State and has the honour to refer to a decision of the United States District Court in Denver, Colorado on 20 June 1986 to provide injunctive relief to the domestic uranium industry by, inter alia, restricting the enrichment of foreign uranium in the Department of Energy's (DOE) facilities under Section 161(V) of the Atomic Energy Act. The decision of the Court, with effect from 6 June 1986, restricts enrichment of foreign uranium for end-use in the United States to a maximum of twenty five percent of material enriched in U.S. facilities in the period to 31 December 1986, and prohibits DOE from offering or providing enrichment services for such foreign uranium from 1 January 1987.

This decision will disrupt the world market for uranium, erode international confidence in the reliability and predictability of United States policies affecting international co-operation in the peaceful uses of nuclear energy, and give rise to a major problem in trade relations between our countries in that it will impact adversely and unfairly on Australia's exports of uranium to the U.S.

The Australian Government requests the United States Government to appeal the Denver Court decision with a view to maintaining unimpaired access for Australian uranium to U.S. market and enrichment facilities.

Australia is a reliable and stable supplier of energy materials, including uranium, to the world market. It has the largest low-cost uranium reserves of any Western world country. The United States, for its part, is the world's largest commercial market for uranium. U.S.

electric utility companies have contracted to purchase a proportion of their uranium requirements from Australia up to and including 1998.

The injunctive order of the Denver Court will severely disrupt the commercial operations of the Australian uranium industry. It will immediately affect Australian material already located in, and presently being shipped to, the United States which has still to be converted, enriched and fabricated and the title to which has yet not passed to the U.S. electric utility purchasers. Moreover, it could void existing contracts with U.S. electric power utilities and prevent the negotiating of any future contracts.

Increased U.S. imports of foreign uranium have been incidental to, and a symptom rather than a cause, of difficulties encountered by the U.S. uranium industry. Those difficulties had their origins in the decision of the United States in 1966 in effect to embargo uranium imports, and in the ensuing severe disruption of the world and U.S. uranium markets. The effect of that decision was subsequently compounded by the impetus it gave to the development of some otherwise non-competitive U.S. uranium production, by declining U.S. uranium ore grades, by progressive and substantial reductions in earlier projected levels of nuclear generation capacity, inventory buildups and the consequential further depressant effect on uranium market prices. The requirement of the U.S. long term fixed commitment enrichment contracts (introduced in 1974 in an atmosphere of a perceived long term supply shortage of uranium) that those enrichment contracts be supported by matching long term uranium supply contracts also contributed to the development of high cost and marginal U.S. uranium mining capacity which, in the event, could not be sustained in the face of deferred and lower than projected nuclear power generation capacity in the U.S. and elsewhere. Increased costs and delays arising from more

rigorous U.S. regulatory requirements affecting the construction and operation of nuclear power facilities have also been contributing factors. The Australian Government concurs in the assessment of the United States Trade Representative, Ambassador Yeutter, in his 24 December 1985 letter to DOE Secretary Herrington that "action under the U.S. Trade Statutes does not appear to be appropriate in regard to both the short and long term problems facing the domestic uranium mining and milling industry".

Australia and the United States have worked closely to foster international co-operation in the exploitation of nuclear energy for peaceful and verified purposes. Continued improvement in the international nuclear non-proliferation and safeguards regime is of vital importance to both countries and to the international community. Unilateral action by the United States against major uranium suppliers to the nuclear fuel cycle would prejudice the pursuit of these objectives by disrupting world nuclear trade.

Action that negates or constrains contractual uranium supply arrangements entered into with U.S. electric power utilities and involving the use of U.S. enrichment facilities will damage our bilateral trade and commercial relations. Aside from its effect on existing contractual arrangements with U.S. utilities, the Denver Court Order will mean that the displacement of foreign uranium by artificially-induced additional production of higher cost U.S. uranium will disrupt the remainder of the world uranium market. A further undesirable consequence could be the development of a two-tiered price for uranium in the world market. Such a development whereby U.S. consumers would be denied the ability to purchase energy inputs at prices comparable to those paid by its trading partners, would appear to be inconsistent with the U.S. national interest and inimical to the further liberalisation of the world trading system.

The effect of the Denver Court Order will be to exacerbate a growing imbalance of opportunity in our bilateral trade. The United States already has a more than two-fold favourable balance of trade with Australia, increasing in our 1984/85 fiscal year to a surplus of Dollars Australian 3.2 billion over U.S. imports from Australia. A major factor in that imbalance is the fact that up to one third of Australia's exports to the U.S. are already subject to non-tariff import constraints. In these and other circumstances described above, it would, in the Australian view, be totally unjustified to extend the range and level of U.S. trade barriers against imports from Australia.

The Denver Court Order does not, of course, invalidate or diminish the commitment of the United States under the General Agreement of Tariffs and Trade (GATT). Action in the terms embodied in the Court Order affecting Australian uranium imported into the United States would, in the view of the Australian Government, breach Australia's entitlements and U.S. commitments under the GATT.

The Embassy of Australia takes this opportunity to renew to the Department of State the assurance of its highest consideration.

[Australian Embassy Seal]

Washington D.C.

27 June 1986

APPENDIX NO. 2

[Australian Embassy Seal]

Note No. 237/87

The Embassy of Australia presents its compliments to the Department of State and has the honour to refer to a decision of the United States Court of Appeals for the Tenth Circuit on 20 July 1987 to affirm the decision of the District Court in Denver, Colorado, on 20 June 1986 to provide injunctive relief to the domestic uranium industry by, inter alia, restricting the enrichment of foreign uranium in the Department of Energy's facilities under Section 161(V) of the Atomic Energy Act.

Australia is a reliable, low-cost and stable supplier of uranium to the world market. These factors have been recognised by U.S. electric utility companies which have contracted for long-term purchases of Australian uranium to beyond 2000 and which are in the process of negotiating further long-term contracts.

An injunctive order to prohibit the Department of Energy from providing enrichment services for foreign uranium end-use in the U.S. could affect existing Australian contracts and prevent the signing of further contracts. Such a development would severely disrupt commercial operations of the Australian uranium industry which has reasonably based investment and trading decisions on the expectation of unhindered access to the U.S. market. Moreover, the displacement of Australian and other foreign sourced uranium by higher cost, protected U.S. material would disrupt the remainder of the world uranium market with uncertain consequences for future international co-operation in the peaceful uses of nuclear energy.

The effect of the decision to preclude foreign uranium from end-use in the U.S. will inevitably result in a resurgence in growth of otherwise non-competitive domestic

production and differential pricing between the U.S. and other world consumers. Such a development would not appear to be consistent with U.S. national interest or U.S. attitudes, recently expressed, towards liberalisation of world trade.

Exclusion of Australian uranium from the U.S. market will exacerbate a growing imbalance in our bilateral trade. The United States already has a more than two fold favourable balance of trade with Australia, increasing in our 1986 fiscal year to a surplus of $A4.1 billion over U.S. imports from Australia. A major factor in this imbalance is the fact that up to one-third of Australia's exports to the U.S. are already subject to non-tariff import constraints. In these circumstances, it would be totally unjustified to extend the range and level of U.S. trade barriers to include uranium imports from Australia.

Additionally, the effective restriction of entry of Australian uranium to the U.S. market is clearly inconsistent with the U.S. GATT obligations and contrary to the declarations against protectionism made by the U.S. at Punta del Este.

The Australian Government requests the United States Government to seek a stay of the Court of Appeals' decision, to appeal the Court's decision and to adopt every other available mechanism, legal, administrative and legislative, to ensure that limitations of the Department of Energy's enrichment of foreign uranium for U.S. end-use are not brought into effect.

The Embassy of Australia takes this opportunity to renew to the Department of State the assurances of its highest consideration.

[Australian Embassy Seal]

Washington, D.C.

24 July 1987